

January 21, 2004

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L03P0007**
Proposed Ordinance no. **2003-0527**

BILLER SUBDIVISION
Preliminary Plat Application

Location: 18925 - 148th Avenue Southeast

Applicant: **SBI Development, Inc.**
Attn: Kurt Wilson
P.O. Box 73790
Puyallup, WA 98373
Telephone: (253) 850-0820

King County: Department of Development and Environmental Services
represented by **Fereshteh Dehkordi**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7173
Facsimile: (206) 296-6613

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:

Approve, subject to conditions

Department's Final Recommendation:

Approve, subject to conditions

Examiner's Decision:

Approve, subject to conditions (modified)

ISSUES:

- Recreation area
- Tree retention
- Road location
- Road improvement standards

SUMMARY: The proposed subdivision of 27 lots in the urban area is approved, subject to conditions.

EXAMINER PROCEEDINGS:

Hearing Opened: January 13, 2004
Hearing Closed: January 13, 2004

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:**1. General Information:**

Owner/Developer: SBI Development INC.
P.O. BOX 73790
Puyallup, WA 98373
(253) 848-0820

Engineer: Jaeger Engineering
9419 South 204th Place
Kent, WA 98031
(253) 850-0934

STR: SE ¼ 34-23-05
Location: 18925 148th Avenue SE
Zoning: R-6-P
Acreage: 4.7
Number of Lots: 27
Density: 6 du/acre
Lot Size: 5,000 square feet
Proposed Use: Single Family Residences
Sewage Disposal: Soos Creek Water & Sewer District
Water Supply: Soos Creek Water & Sewer District
Fire District: King County Fire District 40
School District: Kent School District

Complete Application Date: April 22, 2003

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the January 13, 2004, public hearing are found to be correct and are incorporated herein by reference. Said report is exhibit no. 2 in the hearing record.
3. The owner/developer is SBI Developing, Inc.
4. Drainage adjustment L03V0043 was approved by DDES to combine the two on-site drainage basins and construct one drainage facility in the northeast corner of the property. The downstream path for the eastern basin leaves the site at the northeast corner. The drainage pond

will be designed to meet the level 2 flow control requirements of the 1998 King County Surface Water Design Manual, which will mitigate impacts of the proposed development on the existing erosion problem along the banks of Molasses Creek, above the Cedar River.

5. The applicant is required by King County code section 21A.14.180 to provide 10,530 square feet of recreation space for the development of 27 lots in the R6 zone classification. The current proposal provides 8,091 square feet of recreation area, which leaves a deficiency of 2,439 square feet. The Applicant requests authorization to pay a fee in lieu of open space for the deficient area, as authorized by KCC 21A.14.185. King County's Lake Youngs Park lies within one quarter mile of the site. Due to the topography of the subject property, provision of additional on-site recreation space is substantially constrained. A fee in lieu of additional on-site recreation space is likely to be of greater benefit to prospective residents of the development, if such fee is used for improvements within Lake Youngs Park. The final details of the provision of additional on-site recreation area or payment of a fee in lieu of the deficient area can be worked out with the submission and review of final engineering plans.
6. King County code section 21A.38.230 provides for the retention or replacement of significant trees in the significant trees special district overlay. The Applicant has submitted a preliminary tree plan, which shows 139 trees proposed to be cut of 169 total significant trees on the site. The significant trees proposed to be saved are located largely within the proposed recreation tract and areas where only minimal grading is expected to occur. The sloping topography of the site is such that substantial grading is required throughout the property in order to achieve the urban density proposed by the Applicant. KCC 21A.38.230.5 allows for plan modifications and tree replacement, which the Applicant can utilize in the development of the site. The tree replacement plan can be submitted with final engineering plans.
7. The plat entrance road is proposed to bisect the site, which provides for the most efficient development of lots. The entrance road will extend to the right-of-way of 146th Avenue Southeast, which is currently undeveloped. Future development of that right-of-way may or may not occur. The right-of-way is unclassified, so that no intersection spacing standards presently exist. An owner of property to the east has requested that the intersection of the plat entrance road with 146th Avenue Southeast be realigned to the north, to be consistent with an access tract that is part of tax lot 186. The King County Department of Transportation does not believe that such a realignment is necessary.
8. The proposed development will not generate any vehicle traffic that will use 146th Avenue Southeast, and opening of that street to vehicles is not necessary to mitigate any impacts of this development. The Applicant will improve Southeast 189th Place within the plat, will provide a pedestrian facility within the 146th Avenue Southeast right-of-way, and will improve the frontage of the subject property on 148th Avenue Southeast to current King County standards. These dedications and improvements are adequate to serve the subject property and mitigate its impacts on 148th Avenue Southeast.

CONCLUSIONS:

1. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, subdivision and zoning codes, and other official land use controls and policies of King County.

2. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for open spaces for drainage ways, streets, other public ways, transit stops, potable water supply, sanitary waste, parks and recreations, playgrounds, schools and school grounds and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
3. The conditions for final plat approval recommended below are in the public interest and are reasonable requirements to mitigate the impacts of the development upon the environment.
4. The dedications of land or easements within and adjacent to the proposed plat, as required for final plat approval or as shown on the proposed preliminary plat submitted by the Applicant on December 11, 2003, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.
5. The provision of on-site recreation area of not less than 8,091 square feet should be required for this development, and the balance of the recreation area for a 27 lot development should be provided for by either additional on-site area or the payment of a fee in lieu, to be used by the King County Department of Parks for improvements in the vicinity that will serve the prospective residents on the subject property. The final determination can occur at the time of engineering plan submission and review.
6. Applicant's tree retention and replacement proposal can provide for the elimination of substantially all of the on-site significant trees, provided that tree replacement is planned for and approved by DDES consistent with the provisions of KCC 21A.38.230.5.
7. The location of the proposed Southeast 189th Place within the plat is consistent with efficient design of the plat and King County Road standards.
8. Dedication of right-of-way for 146th Avenue Southeast, without construction of improvements other than a temporary cul-de-sac and a pedestrian connection to Southeast 188th Way; together with dedication of additional right-of-way for 148th Avenue Southeast, dedication of Southeast 189th Place, and improvement of those streets to current county standards, adequately meets the need to provide public access and mitigate the traffic impacts of the proposed development on 148th Avenue Southeast.

DECISION:

The proposed preliminary plat for the Biller property, as revised and received December 11, 2003, is GRANTED preliminary approval, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-6 zone classification. All lots shall meet the minimum dimensional requirements of the R-6 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.

4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS), except as may be modified by variance.
5. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - A. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - B. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - C. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
 - D. The drainage detention facility shall be designed to meet at a minimum the Level 2 Flow Control and Basic Water Quality menu in the 1998 King County Surface Water Design Manual(KCSWDM). Note that a surface water adjustment (KC File L03V0043) is approved for this subdivision. All conditions of approval for this adjustment shall be met prior to engineering plan approval.
7. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:
 - A. Southeast 189th Place (the internal access road) shall be improved at a minimum to the subaccess street standard. A temporary turnaround shall be provided at the west terminus of the road per the KCRS.
 - B. FRONTAGE: The frontage of the site along 148th Avenue SE (west side only) shall be improved to the urban neighborhood collector standard.

- C. Tracts C through G shall be improved as joint use driveways per Section 3.01 of the KCRS. These driveways shall be owned and maintained by the lot owners served. Notes to this effect shall be shown on the engineering plans and on the final recorded plat.
 - D. Twenty feet of additional R/W shall be dedicated along the west plat boundary for 146th Avenue SE. A 5 foot paved pedestrian walkway shall be constructed in the 146th Avenue SE R/W from SE 189th Street to the existing sidewalk south of SE 188th Way within the plat of Bollman.
 - E. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.08 of the KCRS.
- 8. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
 - 9. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
 - 10. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
 - 11. There shall be no direct vehicular access to or from 148th Avenue SE and 146th Avenue SE from those lots which abut it. A note to this effect shall appear on the engineering plans and final recorded plat.
 - 12. The applicant shall provide not less than 8,091 square feet of on-site recreation area. Additional on-site recreation area, or a fee in lieu of that portion of the remaining 2,439 square feet not provided on-site, shall be compensated for by a fee in lieu of recreation area paid to the King County Department of Parks for improvements to a public park that will serve prospective residents of the subject property. Improvements to the on-site recreation area shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - A. An overall conceptual recreation space plan shall be submitted for review and approval by DDES, with the submittal of the engineering plans. This plan shall include location, area calculations, dimensions, final grade and general improvements including landscaping in accordance with KCC 21A.16. The approved engineering plans shall be consistent with the overall conceptual plan.

- B. A detailed recreation space plan (i.e., landscape specs, equipment specs, etc.) consistent with the overall conceptual plan, as detailed in item A., shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the final plat documents.
 - C. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
13. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation and open space tract(s).
14. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
- A. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads (148th Avenue SE & SE 189th Place). Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - B. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - C. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - D. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - E. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - F. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - G. The applicant shall contact Metro Service Planning at 684-1622 to determine if 148th Avenue SE is on a bus route. If 148th Avenue SE is a bus route, the street tree plan shall also be reviewed by Metro.
 - H. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

15. A detailed tree retention plan or significant tree replacement plan shall be submitted with the engineering plans for the subject plat. The tree retention or replacement plan (and engineering plans) shall be consistent with the requirements of KCC 21A.38.230. No clearing of the subject property is permitted until the tree retention or replacement plan is approved by LUSD. Flagging and temporary fencing of any trees to be retained shall be provided, consistent with KCC 21A.38.230B4. The placement of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited within the fenced areas around preserved trees, except for grading work permitted pursuant to KCC 21A.38.230B4d(2).

A note shall be placed on the final plat indicating that the trees shown to be retained on the tree retention plan shall be maintained by the homeowner's association or the future owners of the proposed lots, as applicable, consistent with KCC 21A.38.230B6. **(Note that the tree retention plan shall be included as part of the final engineering plans for the subject plat.)**

ORDERED this 21st day of January, 2004.

James N. O'Connor
King County Hearing Examiner *pro tem*

TRANSMITTED this 21st day of January, 2004, to the parties and interested persons of record:

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MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before February 4, 2004***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before February 11, 2004***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE JANUARY 13, 2004 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L03P0007.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Fereshteh Dehkordi, Bruce Whittaker and Kristen Langley, representing the Department; Curt Wilson, representing the Applicant, and James Jaeger, Floyd Skagen, and Robert Corfman.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES File No. L03P0007
- Exhibit No. 2 DDES Preliminary Report dated January 13, 2004
- Exhibit No. 3 Application dated March 24, 2003
- Exhibit No. 4 Revised Environmental Checklist dated November 21, 2003
- Exhibit No. 5 Declaration of Non-Significance dated December 2, 2003

- Exhibit No. 6 Affidavit of Posting indicating September 3, 2003 as date of posting and September 8, 2003 as the date the affidavit was received by DDES
- Exhibit No. 7 Revised Site Plan dated December 11, 2003
- Exhibit No. 8 Assessors Map SE 34-23-05
- Exhibit No. 9 Level One Drainage Analysis Report by James Jaeger dated January 16, 2003
- Exhibit No. 10 Revised Level One Drainage Analysis Report by James Jaeger received October 3, 2003
- Exhibit No. 11 Preliminary Drainage Calculations by James Jaeger received October 3, 2003
- Exhibit No. 12 KC SWDM Adjustment Approval dated September 18, 2003
- Exhibit No. 13 Conceptual Drainage Plan received October 3, 2003
- Exhibit No. 14 Certificate of Transportation Concurrency dated May 23, 2002
- Exhibit No. 15 Supplemental Traffic Impact Analysis dated June 6, 2003
- Exhibit No. 16 Conceptual Drainage Plan received December 11, 2003

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